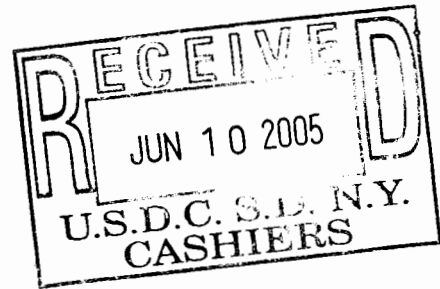


95 CV 5520

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

- v. -

THE VILLAGE OF AIRMONT, THE VILLAGE
OF AIRMONT BOARD OF TRUSTEES, and
THE VILLAGE OF AIRMONT PLANNING
BOARD,

Defendants.
-----X

COMPLAINT

05 Civ.

Plaintiff United States of America (the "United States" or the "Government"),
upon information and belief, alleges for its complaint as follows:

NATURE OF THE CASE

1. This action is brought by the United States to enforce the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et seq. ("RLUIPA"), and to redress discrimination based upon religion in violation of the Fair Housing Act, 42 U.S.C. § 3601 et seq.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 2000cc-2(f), 42 U.S.C. § 3614(a), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to 42 U.S.C. § 2000cc-2(f), the United States is authorized to commence suit against a local government for injunctive or declaratory relief to enforce compliance with RLUIPA. The United States is authorized, pursuant to 42 U.S.C. § 3614, to commence suit to enforce the Fair Housing Act.

4. Venue is proper in this district under 28 U.S.C. § 1391.

THE PARTIES

5. Plaintiff is the United States.

6. Defendant Village of Airmont (“Airmont”) is a “government” within the meaning of 42 U.S.C. § 2000cc-5(4)(A).

7. Defendants Village of Airmont Board of Trustees and Village of Airmont Planning Board are branches, departments, agencies, or instrumentalities of a “government” within the meaning of 42 U.S.C. § 2000cc-5(4)(A). (Airmont, its Board of Trustees, and its Planning Board, will be collectively referred to as “Defendants.”)

BACKGROUND

8. Airmont is located within the Town of Ramapo (“Ramapo”), in Rockland County, New York.

9. Ramapo consists of twelve incorporated villages, including Airmont, and unincorporated sections.

10. Airmont was incorporated in 1991.

11. Airmont enacted its own zoning code in 1993 (the “Zoning Code”).

12. The Zoning Code has been in effect in Airmont from 1993 to date.

A. **Airmont’s Prohibition of Religious Boarding Schools**

13. Under Airmont’s Zoning Code, there is no “as of right” permission to operate a school, secular or religious, anywhere in the Village.

14. The Zoning Code permits schools only as “conditional uses,” subject to approval by Airmont’s Planning Board.

15. Airmont’s Zoning Code also prohibits any school from having on-campus dormitory housing. Specifically, the Zoning Code conditionally permits “[s]chools of general or religious instruction and buildings for religious instruction, *provided that there shall be no residential uses upon the lot other than a guard or caretaker’s dwelling.*” Zoning Code, Art. III, Sec. 5.1(B)(14), 5.2(B)(14) 5.3(B)(11), 5.4 B(11), 5.5(B)(9), 5.6(B)(9) (emphasis added). Accordingly, the Zoning Code, on its face, prohibits religious boarding schools (*i.e.*, religious schools with on-campus residential student housing) from operating anywhere in Airmont.

16. At the time Airmont enacted its Zoning Code, the Hasidic community operated religious boarding schools in Ramapo and other areas of Rockland County and New York State. Airmont included the Zoning Code prohibition on boarding schools in order to prevent Hasidic boarding schools from operating in Airmont.

17. While Airmont’s Zoning Code bans boarding schools from operating in any district of Airmont, the Zoning code permits other building projects that entail group residential components. For example, the Zoning Code permits the construction and operation of community residence facilities for the disabled; “family and group care” facilities; camps,

including sleep-away camps; hospitals; and nursing homes. Such land uses are permitted even in the most rural zoned districts of the Village.

18. The Zoning Code also permits construction of hotels and motels in Airmont's shopping district.

19. Airmont's Zoning Code also designates a specialized housing district for construction and operation of housing developments for senior citizens and persons with physical disabilities.

20. In or about 2003, Airmont permitted construction and operation of the "Retreat at Airmont," a six-building, upscale condominium development for persons over age 55, which includes a recreation building and swimming pool.

21. In 2003, Airmont also permitted construction and operation of the "Airmont Gardens" complex, a building project including approximately 140 housing units for seniors.

22. Accordingly, while the Zoning Code completely prohibits all schools from having group residential housing, it permits other non-religious building projects that accommodate group residential needs.

B. Airmont's Denial of the Application of Congregation Mischknois Lavier Yakov

23. Congregation Mischknois Lavier Yakov ("the Congregation") is a religious congregation of Hasidic Jews. For purposes of RLUIPA, the Congregation constitutes a "religious assembly or institution." 42 U.S.C. § 2000cc(a)(1).

24. It is the Congregation's religious practice and belief that, when Hasidic boys reach the age of approximately 15 years, they are sent to live and study at religious boarding

schools (called “yeshivas” or “campus yeshivas”) to pursue their religious studies for an indefinite period of time. Members of the Congregation believe that it is essential for these boys to live, study and pray in the same place in order to minimize outside influences and to intensify the religious learning experience.

25. Because promoting religious education as a way of Hasidic life is central to the Congregation’s religious belief and practice, students are encouraged to continue learning in the same intense, on-campus yeshiva environment even after they marry.

26. In 2001, the Congregation purchased a 19-acre tract of land located in Airmont, on Hillside Avenue near the border of New Jersey (“the Property”).

27. The Property is located within the “RR-50” district of Airmont, a rural residential zone requiring lots that are a minimum of 50,000 square feet.

28. In or about April 2002, the Congregation applied to the Airmont Planning Board for a conditional use permit and site plan approval to build their religious school (collectively, “the application”). The Congregation’s application included the proposed construction of two types of on-campus student housing: a dormitory building to accommodate up to 200 unmarried students, and 72 townhouses to accommodate married students and staff.

29. The student dormitory and student townhouses proposed in the Congregations’ application are “dwellings,” as that term is defined by the Fair Housing Act. 42 U.S.C. § 3602.

30. The Congregation’s desire to use its Property to build a religious school qualifies as “religious exercise” within the meaning of RLUIPA. 42 U.S.C. § 2000cc-5(7)(A) & (B).

31. In support of its application, the Congregation submitted an environmental study prepared by the Congregation's engineers addressing the school's anticipated impact on environmental issues, including traffic, sewage, electricity, health and safety. That study concluded that construction and operation of the school would pose no adverse environmental impact.

32. Pursuant to New York state law, the Airmont Planning Board referred the Congregation's application to the Rockland County Department of Planning for comment. On or about May 30, 2002, Rockland County's Department of Planning recommended that the Congregation's application be denied because the Congregation's plan to build and operate a religious boarding school on the Property was inconsistent with Airmont's zoning prohibition on residential student housing.

33. On or about June 24, 2002, the Village of Airmont, by its Planning Board, denied the Congregation's application. The sole basis cited by Airmont's Planning Board for denying the Congregation's application was the Zoning Code's prohibition on residential student housing.

34. Airmont has not identified any compelling government interest for denying the Congregation's application or for the Zoning Code's ban on all schools with residential student housing -- regardless of the proposed school's size, location within Airmont, or the capacity or type of on-campus housing.

FIRST CLAIM FOR RELIEF
(Violation of Section 2(a) of RLUIPA)

35. Paragraphs 1 through 34 are realleged and incorporated in this paragraph by reference.

36. Defendants' ban on religious boarding schools, on its face and as applied, substantially burdens the religious exercise of members of the Congregation and other Hasidic Jews with similarly held beliefs. Specifically, the Zoning Code makes it impossible for the Congregation and other Hasidic Jews with similarly held beliefs to engage in the religious educational experience that their faith mandates.

37. Defendants' ban on religious boarding schools does not further a compelling government interest, or even if it does, it is not the least restrictive means of furthering that compelling government interest.

38. The substantial burden imposed by Airmont's zoning ban on religious boarding schools, and by Airmont's denial of the Congregation's application, affects commerce within the meaning of RLUIPA. 42 U.S.C. § 2000cc(a)(2)(B).

39. Defendants' denial of the Congregation's application constitutes the imposition or implementation of land use regulations whereby Defendants made, or had in place formal or informal procedures or practices of, individualized assessments regarding the Congregation's application within the meaning of RLUIPA. 42 U.S.C. § 2000cc(a)(2)(C).

40. Defendants' zoning ban on religious boarding schools, on its face and as applied to the Congregation, violates Section 2(a) of RLUIPA. 42 U.S.C. § 2000cc(a)(1).

SECOND CLAIM FOR RELIEF
(Violation of Section 2(b)(2) of RLUIPA)

41. Paragraphs 1 through 34 are realleged and incorporated in this paragraph by reference.

42. Defendants' zoning ban on religious boarding schools, and Defendants' application of that ban to the Congregation, constitutes the imposition or implementation of a

land use regulation that discriminates, and continues to discriminate, against the Congregation on the basis of religion or religious denomination, in violation of Section 2(b)(2) of RLUIPA. 42 U.S.C. § 2000cc(b)(2).

THIRD CLAIM FOR RELIEF
(Violation of the Fair Housing Act)

43. Paragraphs 1 through 34 are realleged and incorporated in this paragraph by reference.

44. Defendants, in denying the Congregation's application to build a religious boarding school with residential student housing, has discriminated against the Congregation by making residential student housing "unavailable" in the Village of Airmont because of religion, in violation of 42 U.S.C. § 3604(a).

45. Defendants' zoning code provision prohibiting residential student housing from existing anywhere in the Village of Airmont discriminates against the Congregation, and Hasidic Jews with similarly held beliefs, based on religion, in violation of 42 U.S.C. § 3604(a).

46. Members of the Congregation are aggrieved persons as that term is defined in the Fair Housing Act, 42 U.S.C. § 3602(i), and they have suffered damages as a result of Defendants' conduct.

47. Defendants' conduct constitutes a denial to a group of persons of rights granted by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601, et seq., which denial raises an issue of general public importance.

RELIEF REQUESTED

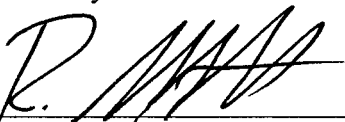
WHEREFORE, the United States, prays that this Court enter judgment that:

- A. Declares that the Village of Airmont zoning code's ban on residential student housing, codified in the Airmont zoning code at Article III, Sections 5.1(B)(14), 5.2(B)(14), 5.3(B)(11), 5.4 B(11), 5.5(B)(9), 5.6(B)(9), violates RLUIPA and the Fair Housing Act;
- B. Enjoins Defendants, their officers, employers, agents, successors and all other persons in active concert or participation with them, from (a) applying Airmont's laws in a manner that substantially burdens the Congregation's religious exercise and (b) discriminating against the Congregation on the basis or religion or religious denomination;
- C. Orders Defendants to amend the Airmont zoning code to permit residential student housing in Airmont;
- D. Enjoins Defendants, their officers, employees, agents, successors and all other persons in active concert or participation with them, from adopting or enforcing any zoning restriction, or from applying their laws in a manner that, violates RLUIPA or the Fair Housing Act;
- E. Assesses civil penalties against Defendants, pursuant to 42 U.S.C. § 3614(d)(1); and

F. Grants such further relief as the Court may deem just, together with the United States' costs and disbursements in this action.

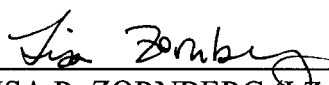
Dated: June 10 __, 2005

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